

A.P. Verma and ors. Vs. K. Dasaradhi Gupta and ors.

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Court : Andhra Pradesh

Decided On : Feb-09-2009

Reported in : 2009(2)ALT698

Judge : Ghulam Mohammed and; Sanjay, JJ.

Acts : [Contempt of Courts Act, 1971](#) - Sections 12, 18, 19 and 19(1); Contempt of Courts Rules; [Land Acquisition Act, 1894](#); [Administrative Tribunals Act, 1985](#) - Sections 14(1), 17 and 30; Indian Penal Code (IPC) - Sections 193, 219 and 228; [Constitution of India](#) - Articles 129, 136, 215, 226, 227, 323A, 323A(2), 323B and 323B(3); Rajasthan High Court Ordinance - Sections 18

Appeal No. : Writ Petition No. 28536 of 2008

Appellant : A.P. Verma and ors.

Respondent : K. Dasaradhi Gupta and ors.

Advocate for Def. : K. Lakshmi Narasimha, Adv. for Respondent No. 1

Advocate for Pet/Ap. : A. Rajasekhar Reddy, Adv.

Disposition : Petition dismissed

Judgement :

Ghulam Mohammed, J.

1. This Writ Petition has been filed by the Central Excise Department challenging the order dated 17-11-2008 passed in CP No. 75 of 2008 in O.A. No. 1274 of 2002 on the file of the Court of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad.

2. The applicant in O.A. No. 1274 of 2002, first respondent herein, was appointed as an Upper Division Clerk in the in the petitioners-Department under direct recruitment quota in the year 1978 and was promoted to the cadre of Tax Assistant in the year 1988. As per the recruitment Rules in vogue he was called for Physical and Endurance Tests and interview for consideration for promotion to the next higher grade on Executive side viz., Inspector of Central Excise for the first time in the year 1986. The respondent No. 1 appeared for the physical test on 25-2-1986 and qualified himself in the Physical and Endurance tests. However, the DPC found him not fit for promotion to the post of Inspector. In the year 1987 again the respondent No. 1 was called for Physical and Endurance tests on 3-6-1987. He qualified himself in the Physical and Endurance Tests except in cycling test. Hence, he was not called for interview before the DPC. In the year 1988, again the respondent No. 1 was called for Physical and Endurance tests held on 16-3-1988 at Hyderabad. This time his height was recorded as 156.5 Cms in height measurement as against the required qualifying height of 157.5 cms. Further the respondent No. 1 was disqualified in chest measurement and in cycling also. Hence, he was not called for interview by the DPC. In the year 1990 he was not called for the physical test/endurance test based on Board's letter No. A-32011/28/86-Ad. III-A dated 5-11-1986 according to which if a candidate was not found fit for promotion to the grade of Inspector on the ground that he does not possess the minimum prescribed height, it is not necessary to include him in the consideration list again next time and in case, a person gains height, he can bring it to the notice of the concerned authority. Aggrieved by this, the respondent No. 1 made a representation dated 26-7-1990 in response to which the respondent No. 1 by letter dated 9-10-1990 was informed that he was not called for interview as he do not possess the minimum height, and also disqualified in chest measurement and in cycling.

3. Subsequently, the respondent No. 1 was promoted as Deputy Office Superintendent in the year 1991 and joined as DOS LS-II on 4-4-991. According to the petitioners it is not a feeder cadre for promotion to the cadre of Inspector, and as he was not qualified in height in the previous physical test held in the year 1988, he was not called for the Physical and Endurance Test in the year 1991. In his representation dated 24-5-1991 he submitted an attested copy of a certificate issued by the Civil Assistant Surgeon, Government General Hospital, Vijaya wada certifying his height as 157.5 cms. In the meanwhile, the respondent No. 1 approached the Tribunal vide O.A. No. 773 of 1991. The Tribunal vide its interim order dated 9-8-1991 directed the Department to permit the respondent No. 1 for the physical tests due to be held on 26-8-1991 or any other subsequent date, but to withhold the results pending the final out come of that O.A. Accordingly, he was called for the physical and endurance tests on 17-9-1991 and interview on 18-9-1991. The respondent No. 1 appeared and qualified in the same, but the results were withheld as per the directions of the Tribunal vide interim orders dated 9-8-1991. Subsequently, the Tribunal vide order dated 11-3-1992 in the above O.A. directed the Department as follows:

In view of this position, we direct the respondents to announce the results of the test, the applicant had appeared for the post of Inspector, Central Excise within a month from the date of receipt of this order. In case the applicant had qualified the said test, we further direct the respondents to consider the applicant for the selection of said post of Central Excise Inspector and also for appointment for the same in accordance with law. If the applicant is aggrieved on account of the action of the respondents, the applicant is at liberty to approach the Tribunal afresh in accordance with law. The O.A. is disposed of accordingly with the above said directions. We make no order as to costs.

4. Be it noted here itself that vide MA No. 656 of 1992, the petitioners-Department sought for extension of time up to 7-7-1992 to implement the order in the above O.A. and the time was accordingly granted. Subsequently, the Department filed a Review Petition No. 63 of 1992 in O.A. No. 773 of 1991 before the Tribunal stating that the respondent No. 1 was disqualified for shortage of height on the previous occasion i.e. in the year 1988 and also that the respondent No. 1 having accepted

promotion of DOS L-II on 4-4-1991, which is not a feeder cadre for the post of Inspector, he is no longer eligible for taking test for promotion to the post of Inspector and prayed the Tribunal to review the order dated 11-3-1992. The Tribunal, on consideration of the entire material on record, by its order dated 25-6-1992 rejected the review petition.

5. Subsequently, the Department filed one more M.A. No. 792/1992 in OA No. 773 of 1991 seeking further extension of six weeks time i.e. up to 18.9.1992 for implementation of the Tribunal order dated 11.3.1992. The Tribunal vide order dated 13-7-1992 disposed of the M.A. extending time for one week only and directed the Department to announce the results of Physical test by 5.8.1992 or else the respondents would be liable for action under the provisions of Contempt of Courts Act. The Department once again called the respondent No. 1 in the year 1992 to attend for the Physical Tests to be held at Hyderabad for which the respondent No. 1 declined to attend the same stating that he was already qualified in the physical test held in the year 1991 and in view of the order of the Tribunal dated 11-3-1992 requested to announce the test results and appoint him as Inspector.

6. Thereafter, the respondent No. 1 filed a Contempt Petition bearing CP No. 27 of 1992 in OA. No. 773 of 1992 before the Tribunal. Subsequently vide proceedings dated 23-9-1992 the respondent No. 1. was promoted as Inspector, on the basis of which the Tribunal vide order dated 24-9-1992 dismissed the CP.

7. The main plea of the respondent No. 1 is that he had been considered by the DPC held in the year 1990, he would have got promotion as Inspector of Central Excise in the year 1990 itself and therefore he filed O.A. No. 1274 of 200 before the Tribunal. The Tribunal vide its order dated 19-3-2008 issued the following direction to the Department.

In view of the above, we are of the view that justice would be met if the respondents are directed to examine as to why the applicant was not considered in the year 1990 when admittedly his juniors were considered and if no plausible reason is found for the same, they shall consider the case of the applicant for promotion w.e.f. the date of his juniors in 1990 by conducting review DPC. The

respondents shall pass appropriate order and communicate the decision to the applicant. The respondents shall complete the entire exercise within a period of two months from the date of receipt of a copy of this order.

The Department, however, found that there was no merit in the request of the respondent No. 1 to consider his case for promotion from the year 1990 onwards, however no speaking orders were issued as different views were taken by the officers for conducting review DPC. On 18-9-2008 orders were passed justifying the action of the Department for not considering him for DPC in the year 1990 and stated that he was correctly considered for the year 1991. Aggrieved by the said order dated 18.9.2008 respondent No. 1 filed Contempt Petition No. 75 of 2008 before the Tribunal and the Tribunal passed order dated 17-11-2008, which reads as under:

That being the position, we find that no plausible ground was found by the respondents other than the height factor which was considered and discussed by this Tribunal in the judgment. We, therefore, find that the respondents have passed the order without application of mind and not in terms of the order of the Tribunal. The decision taken by the respondents for not conducting review DPC for the year 1990 when no plausible ground was found, is not correct one. We therefore, grant three months to comply with the order in view of the above observations and pass order accordingly. Respondents shall produce compliance report on next date. Matter posted on 17-2-2009.

8. Challenging the said order, the present writ petition is filed by the Department.

Sri A. Rajasekhar Reddy, learned Additional Solicitor General contended that by issuing a suitable speaking order after examining the matter, the Department has complied with the directions of the Tribunal in its order dated 19-3-2008 in O.A. No. 1274 of 2002 and even if the respondent No. 1 was aggrieved by the speaking order issued by the Department, the Tribunal ought to have permitted the respondent No. 1 to file fresh O.A. challenging the said order, instead the Tribunal issued contempt proceedings, and the same is liable to be set aside.

9. Learned Counsel for the petitioners relied on the decisions reported in V.M. Manohar Prasad v. N. Ratnam Raju 2004 (13) SCC 610, J.S. Parihar v. Ganpat Duggar 1996 (6) SCC 291, L. Chandra Kumar v. Union of India : [1997]228ITR725(SC) , and Union of India and Ors. v. Subedar Devassy PV 2006 (2) ALD 30. There is no dispute with regard to the propositions laid down in these judgments.

On the other hand, learned Counsel for the respondent No. 1 Sri Dr. K. Laxmi Narasimha contends that pursuant to the orders passed by the Tribunal O.A. No. 1274 of 2002 dated 19-3-2008, the Tribunal only directed the respondents to implement its order in strict sense, when once the order has attained finality. Learned Counsel further contends that the applicant was very much eligible in the year 1986, 1987 and 1988, therefore, he cannot be denied consideration for the said post in the year 1990, and that no fresh cause of action arises for consideration and that the writ petition is not maintainable, when the matter is pending before the Tribunal. Learned Counsel in support of his contentions, has relied on the decisions reported in Bihar Finance Service House Construction Cooperative Society Ltd. v. Gautam Goswami and Ors. : AIR 2008 SC1975 , All India Regional Rural Bank Officers Federation and Ors. v. Government of India and Ors. : (2002)11LLJ527SC), D.N. Taneja v. Bhajan Lal : [1988]3SCR888 , Midnapore Peoples Coop. Bank Ltd v. Chunilal Nanda : 2006 CriLJ2903 , T. Sudhakar Prasad v. Govt. of A.P. and Ors. 2001 (1) Scc 516), Suresh Chandra Poddar v. Dhani Ram and Ors. : (2002)11LLJ822SC .

10. In N. Ratnam Raju's case 2004 (13) SCC 610, some of the employees of the Andhra Pradesh Scheduled Castes Finance Corporation had moved the High Court of Andhra Pradesh for their regularization in service. A learned single Judge of this Court passed an order directing that the employees completing five years continuous service to be considered for regularization against clear vacancies of posts. The request of the appellants therein for regularization was turned down as the posts against which regularization was being sought for were not sanctioned by competent authority. The appellants therein moved the contempt petition and the contempt Judge directed the authorities particularly the Government to sanction the posts so that the employees could be absorbed on permanent posts.

Considering those situations, it was held by the Apex Court that the Contempt Court cannot pass any supplemental order to the main order.

11. In J.S. Parihar's case : AIR 1997 SC113 the controversy relates to the preparation of the seniority list of the Engineers in Rajasthan Civil Engineering Services. In WP No. 560 of 1970, by its order dated 6-10-1988, the Division Bench of the Rajasthan High Court declared the seniority list prepared with retrospective effect in terms of the amended rules as unconstitutional; it accordingly quashed the list and directed preparation of the seniority list afresh to determine the inter se seniority on that basis and to grant promotions to the appellant therein within the specified time. When the seniority list came to be prepared, the contempt proceedings were initiated and learned single Judge on consideration of the merits of the case held that the respondents therein had not willfully disobeyed the order of the court, however gave certain directions to the respondent-State. The State had preferred appeal before the Division Bench of Rajasthan High Court and the Division Bench while holding the appeal as not maintainable under Section 19 of the Contempt of Courts Act 1971, held that the appeal would be maintainable as letters patent appeal as the directions issued by the learned single Judge would be a judgment within the meaning of Section 18 of the Rajasthan High Court Ordinance and accordingly set aside the directions issued by the learned single Judge. Considering those situations, the Supreme Court while dismissing the appeal, held as follows:..once there is an order passed by the Government on the basis of the directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order. After re-exercising the judicial review in contempt proceedings, afresh direction by the learned single judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the single Judge, the Division Bench corrected the

mistake committed by the learned single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned single Judge when the matter was already seized of the Division Bench.

In Subedar Devassy PV's case 2006 (2) ALD 30, a learned single Judge of the Madhya Pradesh High Court issued certain directions while disposing of Writ Petition No. 4511 of 1996, and alleging that the directions were not complied with, a petition was filed for initiation of contempt proceedings. The appellants therein stated that the directions have been complied with and therefore the contempt proceedings were dropped by accepting the explanation, as reasonable. It was specifically noted that from the steps taken by the alleged contemnors, it cannot be said that the action of the respondents in the contempt proceedings was in any manner contemptuous or disrespectful. Having said, certain further directions were given by the learned single Judge and the same were challenged before the Apex Court. Considering those circumstances, the Apex Court held as follows:

If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach the court that passed the order or invoke jurisdiction of the appellate court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong, the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. While dealing with an application for contempt the court cannot traverse beyond the order, non-compliance with which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible. In Gautam Goswami's case 2008 (5) SCC 339, proceedings were initiated in 1973 under the provisions of the [Land Acquisition Act, 1894](#) to make available land to the petitioner society therein. Total land measuring 59.4 acres was acquired but when the writ petitions were filed in the High Court and subsequently when appeal was filed in the Supreme Court, both the courts released part of the land, and finally the petitioner-Society became

entitled to 31.7725 acres of land. However, the petitioner-society therein was not provided total area of land to which it was entitled under the judgments of the High Court and the Supreme Court, for which the petitioner Society moved contempt petition. Some of the parties intervened on the ground that further land should not be provided to the petitioner Society, raising arguments that (i) those parties had purchased lands and also constructed houses thereon, and (ii) some of the members of the petitioner Society had moved to Jharkhand when it came into existence during the pendency of the litigation. Besides, the petitioner Society also pointed out an error in the High Court judgment due to which another society had been given more land than what it was actually entitled. The question that fell for consideration before the Supreme Court was whether it was permissible to reopen all these issues when the matter relating to area of land to be made available to the petitioner-Society stood finally settled by the judgments of the High Court and Supreme Court. Considering those situations, the Apex Court held that if the applicants are the purchasers of lands pendente lite which was subject matter of different proceedings before the High Court as also the Supreme Court, they are also bound thereby. It was also held by the Apex Court that while exercising contempt jurisdiction the Supreme Court does not intend to reopen the issues which could have been raised in original proceedings nor shall it embark upon other questions including the plea of equities which could fall for consideration only in original proceedings. The court is not concerned as to whether the original order was right or wrong. The court must not take a different view or traverse beyond the same. It cannot ordinarily give an additional direction or delete a direction issued. It will not do anything which would amount to exercise of its review jurisdiction.

In All India Regional Rural Bank Officers' case 2002 (3) SCC 554, notification issued purportedly in compliance with Supreme Court's direction, found in fact to be not in compliance therewith but not involving deliberate violation thereof either. Considering those circumstances, it was held that the authorities concerned need not be punished.

In D.N. Taneja's case 1988 (3) SCC 26, the Apex Court considering various case laws in this aspect held as follows:

Mr. Sibal, learned Counsel appearing on behalf of the respondent, has taken a preliminary objection to the maintainability of the appeal under Section 19(1) of the Act. It is contended by him that as no punishment was imposed on the respondent by the High Court in exercise of its jurisdiction to punish for contempt, Section 19(1) is inapplicable and the appeal is incompetent. Section 19(1) provides as follows:

19(1) An appeal shall lie as of right from any order or decision of a High Court in the exercise of its jurisdiction to punish for contempt (a) where the order or decision is that of a Single Judge, to a Bench of not less than two Judges of the court, (b) where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court. In *Midnapore Coop. Bank Ltd's case* 2006 (5) SCC 399, the following questions fell for consideration before the Apex Court.

(9) On the aforesaid facts and the contentions urged, the following questions arise for consideration:

(i) Where the High Court, in a contempt proceedings, renders a decision on the merits of a dispute between the parties, either by an interlocutory order or final judgment, whether it is appealable under Section 19 of the contempt of Courts Act, 1971. If not, what is the remedy of the person aggrieved.

(ii) Where such a decision on merits, is rendered by an interlocutory order of a learned single Judge, whether an intra-court appeal is available under Clause 15 of the Letters patent.

(iii) In a contempt proceeding initiated by a delinquent employee (against the Enquiry officer as also the Chairman and Secretary in-charge of the employer-bank), complaining of disobedience of an order directing completion of the enquiry in a time bound schedule, whether the court can direct (a) that the employer shall reinstate the employee forthwith; (b) that the employee shall not be prevented from discharging his duties in any manner; (c) that the employee shall be paid all arrears of salary; (d) that the Enquiry Officer shall cease to be the Enquiry Officer and the employer shall appoint a fresh Enquiry Officer; and (e) that the suspension

shall be deemed to have been revoked..

(11) The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarized thus:

I. An appeal under Section 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the constitution.

III. In a proceeding for contempt, the High court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of 'jurisdiction to punish for contempt' and therefore, not appealable under Section 19 of CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under Section 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the [Constitution of India](#) (in other cases). The first point is answered accordingly.

12. In T. Sudhakar Prasad's case 2001 (1) Supreme Court Cases 516, the State of Andhra Pradesh and one of its officers filed a writ petition before the High Court challenging the jurisdiction of the A.P. Administrative Tribunal to take cognizance of the contempt case filed against them. In another matter an application invoking contempt jurisdiction of the High Court, without approaching the Tribunal under Section 17 of the Administrative Tribunals Act, and complaining of willful disobedience of an order passed by the Tribunal was filed before the High Court. In both the matters, the question arose was whether the such proceedings were appropriately maintainable before the High Court or the Administrative Tribunal. The High Court held that in view of the Supreme Court's decision in L. Chandra kumar's case 1997 (3) SCC 261, Section 17 of the [Administrative Tribunals Act, 1985](#) ceased to survive and therefore, the Administrative Tribunals could not exercise the contempt jurisdiction there under. It was further held that motion for punishing for the contempt of an Administrative Tribunal could be made before the High Court only by following the procedure as applicable to the contempt of subordinate courts under the [Contempt of Courts Act, 1971](#) and the rules made there under by the High Court and not directly. Allowing the said appeals, the Supreme Court held as follows:

(9) Articles 129 and 215 of the [Constitution of India](#) declare Supreme Court and every High Court to be a Court of Record having all the powers of such a court including the power to punish for contempt of itself. These articles do not confer any new jurisdiction or status on the Supreme Court and the High Courts. They merely recognise a pre-existing situation that the Supreme Court and the High Court are courts of record and by virtue of being courts of record have inherent jurisdiction to punish for contempt of themselves. Such inherent power to punish for contempt is summary. It is not governed or limited by any rules of procedure excepting the principles of natural justice. The jurisdiction contemplated by Articles 129 and 215 is inalienable. It cannot be taken away or whittled down by any legislative enactment subordinate to the Constitution. The provisions of the [Contempt of Courts Act, 1971](#) are in addition to and not in derogation of Articles 129 and 215 of the Constitution. The provisions of [Contempt of Courts Act, 1971](#) cannot be used for limiting or regulating the exercise of jurisdiction contemplated by the said two Articles..

(15) IT is thus clear that the Constitution Bench has not declared the provisions of Article 323-A(2)(b) or Article 323-B(3)(d) or Section 17 of the. Act ultra vires the Constitution. The High Court has, in its judgment under appeal, noted with emphasis the Tribunal having been compared to like 'courts of first instance' and then proceeded to hold that the status of Administrative Tribunals having been held to be equivalent to court or tribunals subordinate to High Court the jurisdiction to hear their own contempt was lost by the Administrative Tribunals and the only course available to them was either to make a reference to High, Court or to file a complaint under Sections 193, 219 and 228 of IPC as provided by Section 30 of the Act. The High Court has proceeded on the reasoning that the Tribunal having been held to be subordinate to the High Court for the purpose of Articles 226/227 of the Constitution and its decisions having been subjected to judicial review jurisdiction of the High Court under Articles 226/227 of the Constitution the right to file an appeal to the Supreme Court against an order passed by the Tribunal punishing for contempt under Section 17 of the Act was defeated and on these twin grounds Section 17 of the Act became unworkable and unconstitutional. We do not find any basis for such conclusion or inference being drawn from the judgments of this Court in the cases of Supreme Court Bar Association (supra) or L. Chandra Kumar (supra) or any other decision of this Court. The Constitution Bench has in so many words said that the jurisdiction conferred on the High Courts under Articles 226/227 could not be taken away by conferring the same on any court or Tribunal and jurisdiction hitherto exercised by the High Court now legislatively conferred on Tribunals to the exclusion of High Court on specified matters, did not amount to assigning tribunals a status of substitute for the High Court but such jurisdiction was capable of being conferred additionally or supplementally on any Court or Tribunal which is not a concept strange to the scheme of the Constitution more so in view of Articles 323-A and 323-B. Clause (2)(b) of Article 323-A specifically empowers the Parliament to enact a law specifying the jurisdiction and powers, including the power to punish for contempt, being conferred on administrative tribunals constituted under Article 323-A. Section 17 of the Act derives its legislative sanctity there from. The power of the High Court to punish for contempt of itself under Article 215 of the Constitution remains intact but the jurisdiction power and authority to hear and decide the matters covered by

Sub-section (1) of Section 14 of the Act having been conferred on the Administrative tribunals the jurisdiction of the High Court to that extent has been taken away and hence the same jurisdiction which vested in the High Court to punish for contempt of itself in the matters now falling within the jurisdiction of tribunals if those matters would have continued to be heard by the High Court has now been conferred on the administrative tribunals under Section 17 of the Act. The jurisdiction is the same as vesting in the High Courts under Article 215 of the Constitution read with the provisions of the [Contempt of Courts Act, 1971](#) or L. Chandra Kumar (supra) or any other decision of this Court. The Constitution Bench has in so many words said that the jurisdiction conferred on the High Courts under Articles 226/227 could not be taken away by conferring the same on any court or Tribunal and jurisdiction hitherto exercised by the High Court now legislatively conferred on Tribunals to the exclusion of High Court on specified matters, did not amount to assigning tribunals a status of substitute for the High Court but such jurisdiction was capable of being conferred additionally or supplementally on any Court or Tribunal which is not a concept strange to the scheme of the Constitution more so in view of Articles 323-A and 323-B. Clause (2)(b) of Article 323-A specifically empowers the Parliament to enact a law specifying the jurisdiction and powers, including the power to punish for contempt, being conferred on administrative tribunals constituted under Article 323-A. Section 17 of the Act derives its legislative sanctity there from. The power of the High Court to punish for contempt of itself under Article 215 of the Constitution remains intact but the jurisdiction power and authority to hear and decide the matters covered by Sub-section (1) of Section 14 of the Act having been conferred on the Administrative tribunals the jurisdiction of the High Court to that extent has been taken away and hence the same jurisdiction which vested in the High Court to punish for contempt of itself in the matters now falling within the jurisdiction of tribunals if those matters would have continued to be heard by the High Court has now been conferred on the administrative tribunals under Section 17 of the Act. The jurisdiction is the same as vesting in the High Courts under Article 215 of the Constitution read with the provisions of the [Contempt of Courts Act, 1971](#). The need for enacting Section 17 arose, firstly, to avoid doubts, and secondly, because the Tribunals are not 'courts of record'. While holding the proceedings under

Section 17 of the Act the tribunal remains a tribunal and so would be amenable to jurisdiction of High Court under Article 226/227 of the Constitution subject to the well-established rules of self-restraint governing the discretion of the High Court to interfere with the pending proceedings and upset the interim or interlocutory orders of the tribunals. However any order or decision of tribunal punishing for contempt shall be appealable only to the Supreme Court within 60 days from the date of the order appealed against in view of the specific provision contained in Section 19 of the [Contempt of Courts Act, 1971](#) read with Section 17 of the [Administrative Tribunals Act, 1985](#). Section 17 of Administrative Tribunals Act is a piece of legislation by reference. The provisions of Contempt of Courts Act are not as if lifted and incorporated in the text of Administrative Tribunals Act (as is in the case of legislation by incorporation); they remain there where they are yet while reading the provisions of Contempt of Courts Act in the context of Tribunals, the same will be so read as to read the word 'Tribunal' in place of the word 'high Court' wherever it occurs, subject to the modifications set out in Section 17 of the Administrative Tribunals Act. Section 19 of the [Contempt of Courts Act, 1971](#) provides for appeals. In its text also by virtue of Section 17 of the [Administrative Tribunals Act, 1985](#) the word 'high Court' shall be read as 'tribunal'. Here, by way of abundant caution, we make it clear that the concept of intratribunal appeals i.e. appeal from an order or decision of a member of a Tribunal sitting singly to a bench of not less than two members of the Tribunal is alien to the [Administrative Tribunals Act, 1985](#). The question of any order made under the provisions of the [Contempt of Courts Act, 1971](#) by a member of the Tribunal sitting singly, if the rules of business framed by the Tribunal or the appropriate government permit such hearing, being subjected to an appeal before a Bench of two or more members of Tribunal therefore does not arise. Any order or decision of the Tribunal punishing for contempt is appealable under Section 19 of the Act to the Supreme Court only. The Supreme Court in the case of L. Chandra Kumar has nowhere said that orders of tribunal holding the contemnor guilty and punishing for contempt shall also be subject to judicial scrutiny of High Court under Article 226/227 of the Constitution in spite of remedy of statutory appeal provided by Section 19 of the Contempt of Courts Act being available. The distinction between orders passed by Administrative Tribunal on matters covered by Section 14(1) of Administrative

Tribunals Act and orders punishing for contempt under Section 19 of the Contempt of Courts Act read with Section 17 of Administrative Tribunals Act, is this: as against the former there is no remedy of appeal statutorily provided, but as against the later statutory remedy of appeal is provided by Section 19 of Contempt of Courts Act itself.

13. In *Anisminic Ltd. v. The Foreign Compensation Commission* and Anr. 1969 All ER 208) it was, inter alia, held that error going to jurisdiction distinguished from error within jurisdiction.

In Suresh Chandra Poddar's case (supra), the Central Administrative Tribunal held that the appellant therein (Director of Education, Government of NCT of Delhi) to be guilty of contempt on account of delay in implementing its order and convicted him under Section 18 of the Act read with Section 12 of the [Contempt of Courts Act, 1971](#) and sentenced him to a fine of Rs. 2000/-. The appellant when called upon by the Tribunal to appear in person, tendered an apology even after showing all the steps taken for challenging Tribunal's order but the Tribunal turned down the apology as not genuine. In that case, the Tribunal therein had not fixed any time limit for complying with its order and the officer concerned, although his writ petition under Article 226 against the order was pending before the High Court, had complied with the order of Tribunal and had even tendered an apology. Considering those circumstances, even in the absence of a stay order from the High Court, the Apex Court, while allowing the appeal filed by the appellant therein, held that the Tribunal instead of convicting the officer, directed him to comply with its order within a time limit fixed by it and only if the order remained un-complied with after the expiry of that time limit, it should have considered whether action should be taken. The relevant portion of the judgment reads as follows:.. Non-grant of stay by the High Court was not by itself enough to speed up proceedings against a person in contempt because the very order was yet to become final. At any rate CAT should have directed the appellant to implement the direction, in the absence of the stay order from the High Court, within a time-frame fixed by it and then considered whether action should be taken in the event of the non-implementation of the order after the expiry of the said time-frame. The contempt jurisdiction is not to be exercised casually but only sparingly and in very

deserving cases. It is appropriate to bear in mind the adage. It is good to have the power of giant, but not good to use it always.

14. The respondent No. 1 was appointed as UDC in the year 1978 and was promoted as Tax Assistant in the year 1988 and later became DOS in the year 1991. Pursuant to the orders of the Tribunal in O.A. No. 773 of 1991 dated 11-3-1992, he was promoted as Inspector of Central Excise on 23-9-1992 and he was given seniority from 1991 onwards. The respondent No. 1 filed the instant O.A. No. 1274 of 2002 seeking direction to the petitioners to review his seniority with effect from 1990. The said O.A. No. 1274 of 2002 was allowed by the Tribunal by its order dated 19-3-2008 and the department was directed to convene a review DPC and to consider the case of the respondent No. 1 with effect from 1990 when his juniors were given the seniority. The Department after examination of the matter decided that there was plausible reasons justifying the Department stand for not considering the respondent No. 1 for promotion from the year 1990 and a detailed order dated 18-9-2008 to this effect was issued. Aggrieved by the said order respondent No. 1 filed Contempt Petition No. 75 of 2008 in O.A. No. 1274 of 2002 before the Tribunal. The Tribunal on consideration of the material on record came to the conclusion that an affirmative direction was issued by the Tribunal directing the Department to consider the case of the respondent No. 1 as to whether there is any plausible reason other than the height factor to deny consideration and accordingly consider the applicant for promotion along with his juniors in the year 1990. Admittedly, it was very much within the knowledge of the authorities that the applicant-respondent No. 1 was not considered in the year 1990, and they cannot deny him promotion with effect from the date when his juniors were considered and promoted in the year 1990. It is only pursuant to the order passed by the Tribunal referred supra, the case of the applicant was considered in the year 1992. The Department did not challenge the order passed in O.A. No. 1274 of 2002 by the Tribunal and it attained finality. From the material available on record, the Tribunal came to the conclusion that the respondent No. 1 being eligible in the year 1986, 1987, 1988 and even in the year 1992 cannot be denied consideration for the said post in the year 1990. No explanation was offered as to how he was considered in the year 1986, 1987 and 1988. The Tribunal therefore came to the conclusion that though sufficient time was given by it, the authorities did not

implement its order in its true spirit. In those circumstances, the Tribunal instead of punishing the contemnors only directed the petitioners to implement the order in its strict sense by granting further three months time. We therefore, do not see any merit to interfere with the impugned order. The Writ Petition fails and is liable to be dismissed. No costs.

15. For the foregoing discussion, the Writ Petition fails and is dismissed. No costs.

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